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June 22, 2005

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: March 9, 2005

Case Number: TSO-0198

This Decision concerns the eligibility of XXXXXX XXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

The individual was granted a DOE security clearance after gaining employment with

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on September 20, 2004, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections j and l. More specifically, the Notification Letter alleges that the individual has: 1) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse,” and 2) “[e]ngaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security.” 10 C.F.R. §§ 710.8(j) and (l) (Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

In reference to Criterion J, the Notification Letter states that the individual was arrested for Driving While Intoxicated (DWI) in January 2004, and was subsequently diagnosed by a DOE consultant-psychiatrist (DOE Psychiatrist) with Alcohol Dependence with Physiological Dependence, in Early Remission. The DOE Psychiatrist further opined in her report that the individual was without adequate evidence of rehabilitation or reformation. With regard to Criterion L, the Notification Letter states the individual has had four alcohol-related arrests, including the January 2004 DWI.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on March 9, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On March 16, 2005, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security’s sole witness. Apart from testifying on his own behalf, the individual called as witnesses his living companion, his Employee Assistance Program (EAP) counselor, his Alcoholics Anonymous (AA) sponsor, a co-worker and a close friend. The transcript taken at the hearing will be hereinafter cited as “Tr.” Various documents that were submitted during this proceeding constitute exhibits to the hearing transcript and will be cited as “Exh.”

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was initially granted a DOE security clearance in 1981, as a condition of his employment with a DOE contractor. Since that time, the individual has had four alcohol-related arrests: (1) in July 1986, on a charge of Driving Under the Influence (DUI), (2) in March 1992, on a charge of DUI, (3) in October 1995, on a charge of DWI, and (4) in January 2004, on a charge of DWI. Following the January 2004 DWI arrest, the individual was referred by his EAP Counselor to a six-week intensive outpatient alcohol treatment program (IOP Program), which the individual began in February 2004. The IOP Program consisted of group therapy sessions with a counselor four times per week. The individual's IOP Program treatment records indicate that he was diagnosed as suffering from Alcohol Dependence, and that the individual successfully completed the program on March 16, 2004. The individual also began attending Alcoholic's Anonymous in March 2004.

The individual was also required by DOE Security to submit to a Personnel Security Interview (PSI), that was conducted on February 11, 2004. During the PSI, the individual discussed his history of alcohol use and his four alcohol-related arrests. Concerning his most recent DWI arrest in January 2004, the individual stated that on that day he had worked the late shift and arrived home at approximately 9:00 a.m. The individual stated that he then consumed eight to nine beers between 9:00 a.m. and noon, while he was working on his farm. The individual reported that he then slept from approximately 12:30 p.m. until 9:00 p.m. when he got up to get ready for work. The individual was arrested upon stopping at a convenience store when a police officer noticed that the individual's tail light was broken. The police officer asked the individual if he had been drinking, and then administered a field sobriety test and a Breathalyzer test. The individual passed the field sobriety test and recorded .05 on the Breathalyzer test, which is below the State legal limit of .08. Nonetheless, the individual was arrested by the police officer on a charge of DWI and transported to jail. The DWI charges were ultimately dismissed. While the individual maintained that he was not intoxicated at the time of his January 2004 DWI arrest, he acknowledged records showing that he had a .17 blood alcohol level (BAL) at the time of his July 1986 arrest and a .14 BAL when arrested for DUI in March 1992. The individual further admitted during the PSI that there were times since his DWI arrest in October 1995 when he drove while legally intoxicated. The individual conceded that he has a problem with alcohol.

Subsequent to the PSI, the individual was referred to the DOE Psychiatrist who reviewed the individual's security file, including the PSI transcript and treatment records, and conducted a psychiatric interview of the individual on April 21, 2004. In her report, the DOE Psychiatrist states that the individual admitted his alcohol problem and gave a candid narrative of his history of alcohol use, including his four alcohol-related arrests. The individual discussed how he has gone through periods of heavy drinking during his life, and that alcohol contributed to problems in his marriage which ended in divorce in 1991. The individual also revealed that he had a

severe heart attack in late 2002, but resumed using alcohol within a few months after being released from the hospital. The individual further revealed that although he had abstained from alcohol following his January 2004 DWI arrest, he had a relapse on February 28, 2004 while still in the process of completing his IOP Program. The individual stated, however, that he had been abstinent since that time.

In her report, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence, With Physiological Dependence, In Early Full Remission, based upon criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV TR*. The DOE Psychiatrist further opined that the individual did not show adequate evidence of rehabilitation and reformation. In this regard, the DOE Psychiatrist concurred with a judgment of the individual's EAP Counselor who recommended the following rehabilitation program for the individual:

1. Attendance at AA twice a week;
2. Attendance at aftercare group therapy once a week;
3. Obtain an AA sponsor;
4. Abstinence from alcohol and mood altering drugs; and,
5. Individual counseling.

The DOE Psychiatrist specified in her report that as adequate evidence of rehabilitation, the individual must follow this program for a minimum of nine months from March 15, 2004, the date of his completion of the IOP Program. As adequate evidence of reformation, the DOE Psychiatrist recommended one year of abstinence if he completes this rehabilitation program, and two years of abstinence if he does not.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion J, Use of Alcohol

(1) Derogatory Information

I find initially that DOE Security properly invoked Criterion J in suspending the individual's security clearance. The DOE Psychiatrist's diagnosis of Alcohol Dependence is corroborated by the diagnostic assessment of the individual's IOP Program,^{2/} and amply supported by the individual's reported history of excessive alcohol use, which includes four alcohol-related arrests.^{3/} See Exh. 2-1 (DOE Psychiatrist's Report) at 8-15; Exh. 4-1 (PSI). At the hearing, the individual agreed with the DOE Psychiatrist's opinion that he is alcohol dependent. Tr. at 39.

In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). It was

^{2/} The individual's EAP Counselor also concurs with the DOE Psychiatrist's diagnosis of Alcohol Dependence. Tr. at 80.

^{3/} While the individual was not found to have been legally intoxicated at the time of his January 2004 arrest, the individual concedes that he had consumed eight to nine beers earlier that day. Exh. 4-1 at 14.

observed in those decisions that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. *Id.* These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material.^{4/} Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation and reformation to mitigate the security concerns of DOE Security.

(2) Mitigating Evidence

Prior to presenting mitigating evidence, the individual revealed at the hearing that he suffered an alcohol relapse following his psychiatric evaluation by the DOE Psychiatrist in April 2004. Although the individual could not recall the exact date, the individual testified that within a few months after seeing the DOE Psychiatrist, he stopped attending AA and began to drink again. Tr. at 34, 46. The individual resumed abstinence in November 2004. Prior to resuming abstinence, the individual stated that he was drinking "anywhere from six to eight [beers] a day, to 12 to 14 a day, depending on whatever." Tr. at 41.^{5/}

However, since resuming abstinence in November 2004, the individual has made significant progress toward maintaining his sobriety. The individual testified that he began attending a different AA group and he had an epiphany about his drinking after hearing a participant say "All you have to remember is you have to surrender to win." Tr. at 28-29, 44-45. Since that time, the individual has continued to attend AA three times a week and has acquired an AA sponsor. Tr. at 36, 42. The individual's AA sponsor testified at the hearing and confirmed the individual's attendance and expressed his observation that the individual is now dedicated to maintaining his sobriety. Tr. at 56-58. The individual's living companion and his close friend, who is also an AA participant, similarly testified that the individual now appears committed to his sobriety and continuing in AA. Tr. at 15-18, 65-67. The individual also continues to see his EAP Counselor on a monthly basis. Tr. at 39, 43. The EAP Counselor sees the individual as having made positive steps within recent months. Tr. at 75. The individual testified that he intends to continue in AA and remain sober, and that he is willing to receive whatever supplemental treatment the EAP Counselor deems

^{4/} The *Adjudicative Guidelines* of 10 C.F.R. Part 710 state the concerns as follows: "Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Guideline G, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, 10 C.F.R. Part 710, Appendix B..

^{5/} During this time period, the individual was continuing to see the EAP Counselor on a monthly basis but concealed that he had resumed drinking. Tr. at 83.

appropriate. Tr. at 40, 44-45.

Despite the individual's progress in the past several months, however, I must find that the individual has yet failed to achieve adequate rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended in her report that the individual participate in AA with a sponsor, receive personal counseling, and have a minimum of nine months of abstinence following his completion of an alcohol treatment program. *See* Exh. 2-1 at 16. However, after hearing the individual's testimony concerning his relapse following her psychiatric interview, the DOE Psychiatrist modified her recommendation, stating that "I assume that he will continue treatment . . . But in addition to that, I would require at least two years of sobriety, because his risk for relapse is really moderate to high at this time." Tr. at 96.^{6/}

According to the DOE Psychiatrist's testimony, the individual has not nearly achieved an adequate level of rehabilitation or reformation at this time, with only five months of sobriety at the time of the hearing. Tr. at 94-95. The record clearly supports her judgment and conclusion. The individual had two alcohol relapses in 2004, during and subsequent to completing his IOP Program. Consequently, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol, and I cannot recommend restoring the individual's security clearance. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual's four alcohol-related arrests, in 1986, 1992, 1995 and 2004. As set forth above, I find that the individual has not sufficiently mitigated the security concerns associated with his use of alcohol. I therefore find, correspondingly, that the individual has not yet overcome the concerns of DOE Security under Criterion L.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R.

^{6/} The EAP Counselor similarly expressed concerns that the individual was not honest with her for several months in mid-2004 when he stopped attending AA and resumed drinking: "Concerns I'm still seeing, concern with the last year of what appears to be relapses, lack of AA attendance, lack of sponsorship, continued drinking in the last year . . . [and, l]ack of honesty in that regard." Tr. at 76.

§§ 710.8(j) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to sufficiently mitigate the security concerns associated with his use of alcohol. I am therefore unable to find that restoring the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: June 22, 2005